

**BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES**

In the Matter of the)
Complaint Against)
Fred and Linda Finke)

**SUMMARY OF FACTS
AND
STATEMENT OF FINDINGS**

Ray Peck filed a complaint against Fred and Linda Finke alleging they violated Montana campaign finance and practices laws when they placed two campaign ads in a newspaper.

SUMMARY OF FACTS

1. Ray Peck, a former Montana state legislator representing House District 91, filed a complaint alleging Fred and Linda Finke violated Montana Code Annotated § 13-35-225 that requires all financed communications advocating the success or defeat of a candidate to include the address of the person who paid for the communication. Mr. Peck also contends that in placing the campaign ads at issue, the Finkes violated Montana Code Annotated § 13-35-235 that prohibits dissemination of incorrect or misleading information regarding election procedures.

2. Fred and Linda Finke, a married couple residing in Chouteau County, Montana, placed a campaign ad in the *Big Sandy Mountaineer*, a newspaper, on two occasions in October and November, 2000. The text of both ads was identical, stating:

Once again, the Democratic Party has ignored the pro-life cause. Their nominees do not regard the sanctity of human life, and favor abortion on demand. It is time to send a message to the Democrats and vote pro-life.

VOTE REPUBLICAN
Elect GEORGE W. BUSH
Elect CONRAD BURNS
Elect DENNIS REHBERG
Elect JUDY MARTZ

//

3. The first ad, published in the October 25, 2000 edition of the *Mountaineer*, stated at the bottom of the ad: "Paid for by the Democratic Party Chairman, Precinct 15 Fred & Linda Finke."

4. The second ad, published in the November 1, 2000 edition of the *Mountaineer*, stated at the bottom of the ad: "Paid for by Precinct 15 Democrats Fred & Linda Finke."

5. Neither of the two ads includes the Finkes' address.

6. The complaint was received in the commissioner's office on November 28, 2000. A copy was sent by certified mail to the Finkes on November 29, 2000. The letter from the commissioner containing a copy of Mr. Peck's complaint was received by the Finkes on December 6, 2000.

7. In a letter responding to the complaint, the Finkes acknowledge they paid for publication of the two ads but contend the ads they submitted contained the following attribution language: "Paid for by Chouteau County, Precinct 15, Democratic Committee Man and Committee Woman, Fred and Linda Finke." The Finkes admit they failed to include their address in the attribution language accompanying the ad but claim they were not aware the statute required their address be included. The response letter from the Finkes was dated December 8, 2000 and was received in the commissioner's office on December 11, 2000. The response letter included the address of the Finkes.

8. According to the Finkes' response to the complaint, in the 2000 primary election in Chouteau County the Finkes, who are Republicans, each received two votes for a position with the Democratic Party in precinct 15. Since those were the only votes cast for the positions, the Finkes decided, as a joke, to serve in the positions, representing themselves as "precinct 15 Democratic committee man and committee woman."

9. The response by the Finkes also points out they received a letter from Mr. Peck during the week of the general election in which Mr. Peck complained to the

Finkes about the two ads they had placed in the *Mountaineer*. The letter to the Finkes from Mr. Peck (a copy of which was provided by the Finkes) did not mention they had failed to include their address on the ads. The Finkes contend they first learned an address was required to be included with their paid political advertisements when they received the letter and enclosed copy of the complaint from the commissioner on December 6, 2000.

STATEMENT OF FINDINGS

Montana Code Annotated § 13-35-225 provides:

Election materials not to be anonymous. (1) Whenever a person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, the communication must clearly and conspicuously state the name **and address** of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer. Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(2) If a document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner, together with the required information, prior to its public distribution.

(3) If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1). (Emphasis added).

The ads placed by the Finkes in the *Mountaineer* did not comply with subsection (1) of the statute that requires the address of the person who paid for the communication to be included on the ad; however, subsection (3) of the statute states that if information required by subsection (1) is "inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission

with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1).”

The Finkes contend they first discovered their ads did not include their address on December 6, 2000 when they received the letter and a copy of the complaint from the commissioner. They also contend the failure to include their address on the ads was inadvertent. If their contentions are correct, the Finkes complied with subsection (3) of Montana Code Annotated § 13-35-225 when they notified the commissioner within five days of discovering the omission that the address had been inadvertently omitted from the ads. By that time, of course, the ads had already run, and there was no way to “bring the material into compliance” with subsection (1) of the statute.

Although the Finkes may have complied with subsection (3) of Montana Code Annotated § 13-35-225, their ads were in violation of subsection (1) of the law when they were published. Depending on the circumstances, it may be appropriate to maintain a civil action for violation of subsection (1), under Montana Code Annotated § 13-37-131, even though a person later complies with subsection (3) of Montana Code Annotated § 13-35-225 by notifying the commissioner of the inadvertent omission of material required by subsection (1). Montana Code Annotated § 13-35-124(1) requires the commissioner to notify the county attorney “[w]henver there appears to be sufficient evidence to justify a civil or criminal prosecution” under the appropriate chapters of title 13. The determination of whether a prosecution is justified must take into account the law and the particular factual circumstances of each case. A prosecutor can decide not to prosecute whenever he or she in good faith believes that a prosecution would not be in the best interests of the state.

I have determined that, based on the circumstances in this case, it would not be in the best interests of the state of Montana to incur the time and expense to pursue a civil action against the Finkes for their failure to list their address on two campaign ads placed in the *Mountaineer*, however, those who choose to expend money to finance

communications that could be construed as campaign materials should be aware that Montana Code Annotated § 13-35-225(1) requires both the name **and address** of the person who financed the expenditure to be clearly and conspicuously stated on the communication.

Mr. Peck also contends the ads, which represented the Finkes were officials of the Democratic Party in precinct 15, violated Montana Code Annotated § 13-35-235, which provides:

Incorrect election procedures information. (1) A person may not knowingly or purposely disseminate to any elector information about election procedures that is incorrect or misleading or gives the impression that the information has been officially disseminated by an election administrator.

(2) A person who violates this section is guilty of a misdemeanor.

The ads placed by the Finkes do not purport to provide information concerning election procedures, nor do they create the impression that the information “has been officially disseminated by an election administrator;” therefore, the Finkes did not violate Montana Code Annotated § 13-35-235 when they purchased the campaign ads.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is insufficient evidence to justify a civil or criminal prosecution based on allegations that Fred and Linda Finke violated Montana campaign finance and practices laws.

Dated this _____ day of July, 2001.

Linda L. Vaughey
Commissioner